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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/316,851	05/21/1999	HAI BUI	003543.P002	8389

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EXAMINER

THOMPSON, MICHAEL M

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 07/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/316,851

Applicant(s)

BUI, HAI

Examiner

Michael M. Thompson

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,13,16-22,35,37-46 and 48-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,13,16-22,35,37-46 and 48-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4-6, 8, 13, 16-18, 20, 21, 35, 40-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Peterson et al. (WO 9318802). Peterson et al. teaches an irrigation system with a reservoir, pump line coupled to the pump, pressure sensor, accumulator, controller coupled to pressure sensor, aspiration system, pump, line, and pressure sensor and a medical device coupled to the irrigation line. Peterson et al. teaches a flexible membrane separating a first and second chamber of the accumulator and in communication with the pressure transducer/sensor, and irrigation line. Furthermore it is the Examiner's position that the ability of the pressure sensor to maintain intraocular pressure is also inherent if not obvious. When puncturing the eye it would seem important to maintain the pressure of the vitreous chamber to prevent leakage of the vitreous humor and/or collapse of the eyeball. Peterson et al. also teaches a controller that varies the pump, determines a flowrate, by providing output signals. It is the Examiner's position that the Peterson et al. patent teaches all of the structural limitations of the claims and their functions, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 7, 19, 22, 23, 34, and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson et al. in view of Voss et al.. Peterson et al. teaches all of the limitations of the claims except for explicitly stating that the controller determines an actual fluidic resistance from the flowrate and provides an output signal. Voss et al. teaches a fluid flow device that monitors fluidic resistance through the monitoring of the impedance to fluid flow. Voss et al. teaches that a device containing an impedance monitor can detect the fluids "fluidic resistance" and calculate a resistance to flow. Peterson et al. teaches a second embodiment of his device containing an impedance monitor in Figure 8. Therefore, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art, at the time of invention, to have modified (if needed) the impedance monitor of Peterson et al., with the impedance and fluidic calculator of resistance to allow the Peterson et al. device to monitor fluidic resistance since it well known in the art of fluid flowing systems to monitor impedance as taught by Peterson et al., if not calculate fluid resistance as explicitly taught by Voss et al. With respect to a valve mechanism coupled to the irrigation line, the Examiner maintains that valves are well known in the art, and are attached to all types of fluid flow devices to prevent backflow, maintain pressure, prevent contamination, to include several other purposes.

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Response to Arguments

1. Applicant's arguments with respect to claims 1, 3-8, 13, 16-22, 35, 37-46, and 48-50 have been considered but are moot in view of the new ground(s) of rejection over prior art that Applicant should consider before allowance.

Contacts

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Michael Thompson whose telephone number is (703) 305-1619. The Examiner can normally be reached on Monday through Friday from 9 am to 5 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Primary, Anh Tuan Nguyen, can be reached on (703) 308-2154. The official fax phone number for submissions to the organization where this application or proceeding is assigned is (703) 872-9302. The official fax phone number for submission of After Final response is (703) 872-9303.

Michael M. Thompson

Patent Examiner

MT

June 20, 2002


ANH TUAN T. NGUYEN
PRIMARY EXAMINER

6/29/02